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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 27 1995

In the Matter of

Southwestern Bell Telephone Company) Transmittal No. 2470,
Tariff F.C.C. No. 73) 2489, CC Docket No.
) 95-158

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**DIRECT CASE OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT), pursuant to the Order Initiating Investigation released October 13, 1995,¹ hereby files its Direct Case. The Investigation Order asks a single question: "Is the cost support information SWBT submitted with Transmittal No. 2470 sufficient to support the ICB service proposed therein under the Commission's rules and policies?"

- I. SWBT'S TRANSMITTAL NO. 2470 COST SUPPORT JUSTIFIES THE PROPOSED ICB SERVICE.
- A. MCI Has Previously Agreed That The Level of Cost Support Is Sufficient.

This investigation arises out of a challenge that MCI has chosen to file against an Individual Case Basis (ICB) arrangement for one of MCI's competitors, Sprint. ICB arrangements with similar levels of cost support have previously been allowed to take effect for MCI.²

¹ In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2470, 2489, CC Docket No. 95-158 (Com. Car. Bur., released October 13, 1995) (DA 95-2156) (Investigation Order).

² In the same section of SWBT's Tariff No. 73, Section 12, two arrangements appear for MCI. On Page 12-5, Case No. 87-IKC-5004 was filed for MCI on September 12, 1988 with less detailed cost (continued...)

Recently, SWBT filed an ICB arrangement for Hertz Corporation (Transmittal No. 2448) with the same level of cost support as in Transmittal No. 2470. MCI opposed this filing because SWBT asked for confidential treatment of the cost support. When SWBT withdrew its request for confidential treatment,³ MCI withdrew its petition. In a letter to the Commission, MCI stated that "SWBT is now following the rules."⁴ There is no difference in the level of cost support between the filing in which MCI has agreed that SWBT is following the rules (Transmittal No. 2448), and the instant filing, except that in the previous case, SWBT had requested, and then withdrew, its request for confidential treatment of its cost support. MCI has also chosen not to oppose other recent ICB filings by SWBT (Transmittal Nos. 2421 and 2357) which contain the same level of cost support.

For Transmittal No. 2470, however, MCI claimed that its "interest" compelled it to require further cost support from SWBT.

²(...continued)

support than that filed in the instant Transmittal. On Page 12-8, Case No. 85-IDL-0057A (filed on January 21, 1986) shows another ICB arrangement filed for MCI which was also justified with less detailed cost support than that filed by SWBT in the instant Transmittal.

³ SWBT attempted, in the past, to file its ICB cost support documentation under requests for proprietary treatment. SWBT withdrew its request for proprietary treatment on Transmittal No. 2448 in order to avoid a delay in the effective date of SWBT's filing and to satisfy the customers' contracted due dates. SWBT still believes this type of information deserves confidential treatment, but was compelled by the circumstances to allow the information to be disclosed.

⁴ Letter dated May 19, 1995 from Don Sussman, MCI, to William F. Caton, Secretary, FCC. A copy is attached.

The Bureau should note the potential benefits of providing more cost information to SWBT's competitors. In previous proceedings in which SWBT has requested confidential treatment of its cost support, SWBT has stressed how valuable this cost support is to its competitors such as MCI Metro. (MCI has entered the local exchange business through its MCI Metro affiliate.) Apparently, when the shoe is on the other foot, MCI agrees.⁵ The more cost support that MCI can require of SWBT, the greater the benefit to MCI Metro in planning its attack upon SWBT's business.

Given that MCI has not opposed filings similar to those at issue here in the past (and in fact has agreed that the level of cost support filed by SWBT "is . . . following the rules"), and that MCI and other competitors would benefit from additional cost data from SWBT, and that one of MCI's competitors would be directly harmed by any delay in the effectiveness of Transmittal No. 2470,

⁵ As recently stated by MCI in Texas proceedings where SWBT has requested data from MCI through requests for information:

Disclosure of MCI's data to its competitors would be invaluable. By knowing the type of information in question, a competitor would be able to specifically identify MCI's customers; know what MCI's cost of providing business to a particular customer is; and know how MCI goes about pricing its services, including knowing MCI's profit margins. Without such information from MCI (or through public disclosure) a competitor would find it extremely difficult, if not impossible, to replicate MCI's data.

(Texas Public Utility Commission Docket No. 12879, MCI Telecommunications Corporation Objections to SWBT's First Request for Information, filed June 30, 1995.)

the Bureau should close this investigation that was encouraged only by MCI, and allow Transmittal No. 2470 to take effect.

B. Further Cost Support Is Not Required By The Rules.

SWBT's Transmittal No. 2470 cost support is sufficient to satisfy the Commission's requirements in determining whether the rates charged in Transmittal No. 2470 are reasonable. SWBT's instant filing contains virtually the same level of cost support provided for ICB filings since divestiture.

1. The Commission Has Previously Declined To Apply 61.38 Requirements To ICB Filings.

The October 4, 1990 LEC Price Cap Order⁶ discussed the application of cost support requirements to ICB filings by local exchange carriers (LECs).⁷ For years prior to the issuance of the LEC Price Cap Order the Commission's policy had been to allow ICB arrangements to become effective using the level of cost support filed by SWBT in the instant case. The LEC Price Cap Order did not require any more or any less cost support than SWBT had filed in the past, and should thus be read as affirming the acceptability of the level of cost support filed by SWBT. In particular, paragraph 193 of the LEC Price Cap Order discusses the exclusion of ICBs from price cap regulation. An ICB is described as an offering using new technology, and having little demand. As demand grows, the offering may eventually become a generally available service. Paragraph 193 also states that ICBs "are simply unique service

⁶ Policy and Rules Concerning Rules for Dominant Carriers 5 FCC Rcd 6786 (1990) (LEC Price Cap Order).

⁷ LEC Price Cap Order at paras. 193-197.

arrangements to meet the needs of specific customers," and that as they become generally available offerings, the offering will be treated as a new service.

The exclusion of ICBs from price cap regulation was confirmed by the April 17, 1991 LEC Price Cap Reconsideration Order.⁸ Paragraph 173 of that Order stated that the LEC Price Cap Order did not change existing regulation of the excluded services and noted that excluded services would continue to be regulated under a traditional approach. Thus, the LEC Price Cap Order, as confirmed by the LEC Price Cap Reconsideration Order, maintained the status quo for excluded services. The traditional approach for ICBs did not include estimates of the carriers overall traffic and revenues (e.g., cross-elastic effects).

2. Assuming That Section 61.38 Applies To ICB Arrangements, SWBT's Cost Support Exceeds The 61.38 Requirements.

Even though 61.38 is not the proper standard, Transmittal No. 2470 exceeds the 61.38 requirements. In regard to the 12-month cost projection requirements, SWBT has disclosed total investment, total annual cost and the monthly cost. The rules neither require nor specify costs to be disaggregated by capital costs or capital cost components. In addition, the rules do not require the segregation of expenses from total cost nor do they require segregation by expense component (e.g. maintenance, administration, etc.).

⁸ Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637 (1991) (LEC Price Cap Reconsideration Order).

To the extent costs are utilized to validate the proposed rate, total costs meet this purpose. As described in Transmittal No. 2470's Description and Justification (D&J), cost factors are applied to the investment required to provide the service. The cost factors are based upon the books and records of SWBT.⁹ Also, it is unlikely that the customer would have accepted the terms and conditions of the ICB if it thought the rates were excessive. If the customer of an ICB has accepted the proposed rate, the opinion of outside parties, especially a competitor of the customer, should be discounted.

In regard to the effect on traffic and revenues, SWBT's Transmittal No. 2470 clearly indicates a single unit of service is to be provided to a single customer. It follows then that the demand associated with the proposed ICB is a single unit. Thus, the representative 12-month recurring revenue is the monthly rate multiplied by 12. Also, since a single unit of service is provided, the total nonrecurring revenue is the Case Preparation Charge detailed on the nonrecurring exhibit.

Finally, the effect on total revenues is equal to the revenues associated with the ICB. Commission policy, as evidenced by previous ICB filings, has never required a detailed cross elasticity analysis with other interstate access services. Since an ICB is an offering with only a single unit of demand, the best

⁹ Also, the cost components are of no value in evaluating the proposed rate. The proposed rate is based, in part, upon the total costs to provide the service. SWBT does not develop rates by cost component and then sum to a total rate. The rate is determined based upon the total cost.

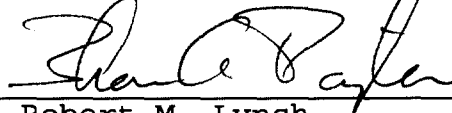
forecast of cross-elastic effects is zero. Thus, a cross elasticity analysis is meaningless, and the Commission has correctly not required this level of information in the past.

II. CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission end the investigation and suspension and allow SWBT's Transmittal No. 2470 to take effect.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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October 27, 1995



**MCI Telecommunications
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1801 Pennsylvania Avenue, N.W.
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May 19, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Southwestern Bell Telephone Company Transmittal No. 2448, Tariff F.C.C No. 73

Dear Mr. Caton:

On April 17, 1995, Southwestern Bell Telephone Company ("SWBT") requested proprietary treatment for the cost support associated with its Transmittal No. 2448. MCI Telecommunications Corporation ("MCI") opposed this transmittal because it was filed with the cost support withheld from public disclosure, which violated the Communications Act and the Commission's rules.

On May 18, 1995, SWBT withdrew its request for confidential treatment of the cost support, and filed its cost support for this transmittal on the public record. Since SWBT is now following the rules outlined by the Commission and the Communications Act, MCI hereby withdraws its petition to reject or, alternatively, to suspend and investigate SWBT Transmittal No. 2448.

Yours truly,

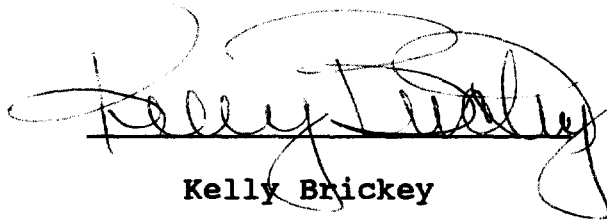
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cc: Geraldine Matise
David Nall
Rocky Hudson
Thomas A. Pajda
Robert M. Lynch
Richard C. Hartgrove



CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Direct Case of Southwestern Bell Telephone Company", have been served this 27th day of October, 1995 to the Parties of Record.



Kelly Brickey

October 27, 1995

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